

## **DEPARTMENT OF REAL ESTATE FORUM**

Sheraton Grand Hotel

Sacramento

June 11, 2004

### **MEETING REVIEW**

**DRE STAFF IN ATTENDANCE:** John Liberator, Robin Wilson, Bill Moran, Fa-Chi Lin, Barbara Bigby, Tom Pool, Chris Neri and Lisa Stratton.

**1) OPENING REMARKS** – John Liberator, Chief Deputy Commissioner, opened the meeting at 1:00 p.m. Liberator, who is currently serving as Acting Real Estate Commissioner until such time as the Governor appoints a permanent Commissioner, began the meeting by asking the audience to join him in a moment of silence in recognition of the Day of Remembrance declared by Governor Schwarzenegger for President Ronald Reagan.

Liberator reported that former Commissioner Reddish Zinnemann resigned her position effective December 8, 2003. On behalf of DRE staff, he thanked her for her service to the people of the State of California and the DRE. Additionally, with the resignation of the Commissioner, the former Real Estate Advisory Commission members concluded their service as well. On behalf of DRE staff, Liberator thanked them for their service to the Department and the Commissioner. He then introduced the department staff in attendance, and announced the forthcoming retirement of Robin Wilson, the DRE's Chief Legal Counsel. Robin has dedicated 31 years to State service, all of it with the DRE. Liberator thanked him for his dedication and service to the Department and the real estate industry.

### **2) OPERATIONS REPORT - JOHN LIBERATOR**

Liberator began his Operations Report by providing an overview of the Department's fiscal status, summarizing revenue, net expenditures and reserves for the period of July 1, 2003 through April 30, 2004 as compared with the same period in the 2002/2003 fiscal year:

Revenue is down 6%, a direct result of the fee reduction which went into effect August 31. Net expenditures are up 5%, primarily due to filling vacant positions and hiring temporary help. Actual reserves are up 41%, to \$22 million.

As to Licensing activity, for the time period of July 1, 2003 through April 30, 2004, as compared to the same period in the prior fiscal year:

Exams: Salesperson exams conducted up 31%; broker exams up 45%

Original Licenses Issued: Salesperson licenses up 10%; broker licenses up 12%

Renewals: 81% of the Salesperson licenses up for renewal were renewed; 87% of the Broker licenses up for renewal were renewed.

Total licensees: As of April 30, the licensee population stood at 385,134, which is up 11% from the same time last year.

Liberator reported that due to the department's increased workload, processing delays had been incurred. In an attempt to reduce these delays, the Department requested and received approval to implement a number of planned efficiencies which, over the course of the past 5 months, has

enabled staff to reduce the processing time for a license from 175 days to 98 days. Staff is still working to reduce that number further.

Liberator attributed much of the department's success in reducing processing times to the assistance received from Business, Transportation & Housing Agency Secretary Sunne Wright McPeak. McPeak authorized the hiring of temporary help to assist with the mail, proctoring and other licensing functions. The Secretary also assisted the Department in obtaining an exemption from the hiring freeze to fill vacant positions, and an authorization to seek the return of a number of previously abolished positions through the budget process.

To address the increased volume of exam applicants, the department began holding "mega" exams, wherein over 2500 people per day were tested. These mega exams will continue to be scheduled to reduce examination backlogs. The Department also implemented online exam rescheduling through the eLicensing system. Since online examination services were introduced in late March, 18,237 transactions have been conducted online. A total of 110,455 transactions have been processed online via the eLicensing system since it went live in September, 2002. These online systems go a long ways towards helping to lessen the paper staff has to process, while providing licensees with more timely service. The Department will further enhance the e-Exam system in October by adding the ability to schedule an original exam online.

Liberator also reported that effective July 1, as a result of C.A.R. sponsored legislation (SB 1080), persons enrolled in a Real Estate Principles course will be allowed to apply for the real estate license exam before having completed the course. The applicants will be able to apply to take the salesperson examination by certifying that they are enrolled in a three semester unit or quarter equivalent college level course in Real Estate Principles. SB 1080 also allows the DRE to accept fingerprints from exam applicants versus having to wait until the applicant applies for the license. Both changes will help to lessen current processing times.

With respect to Subdivision activity, again comparing the July 1, 2003 through April 30, 2004 time period with the same period in the prior fiscal year, applications for subdivision public reports have increased by 7%. This increase reflects a continuance of the ongoing moderate increase in applications previously experienced.

As to Enforcement, Legal & Audit Activity, for the period of July 1, 2003 – April 30, 2004:

736	Licenses were denied
384	Denied w/right to a restricted license
256	Licenses were revoked
131	Revoked w/right to a restricted license
107	Licenses were suspended
29	D&R orders were filed
62	Licenses were voluntarily surrendered in connection with an enforcement action
626	Audits were conducted

Finally, Liberator announced that the Department is considering pursuing legislation to remove the six months cap on reserves as set forth in the B&P Code. Currently, as a result of prior transfers of reserves to the General Fund, a statutory six months limitation was placed on reserves along with a prohibition against further transfers. This prohibition is referred to as the "poison pill" and states that if reserves exceed six months as of June 30 of any fiscal year, the

Department must lower its fees so the reserves will be less than six months at the close of the next fiscal year. The department would like to eliminate the six month cap, which over the years has caused a roller coaster effect on fees and not allowed for a sustainable stable fee structure. To protect against future transfers, the prohibition against transfers to the General Fund would remain in the statute. If a transfer was required, fees would automatically go to the reversion level, which is the protection the statute was meant to provide.

With respect to the issue of fee stability, Liberator explained that prior to the cap, fees were stable for 11 years. Since the cap, there have been four fee adjustments. With each adjustment, incorrect fees are sent in by thousands of applicants and licensees, which means time is spent issuing refunds or sending requests for additional money. It also means time is taken away from curing backlogs and processing applications. Additionally, stable fees are more equitable to the licensee population. Since fees have not been stable for a solid 4 year period, some licensees have benefited from a reduction, while many others have not. Lastly, stable fees and sufficient reserves will allow the department to pursue multi-year IT projects which require large capital expenditures, such as electronic exams and a new IVR phone system. These projects will help improve efficiency and service to DRE's stakeholders.

Liberator requested CAR's favorable consideration of this proposal.

### **3) ENFORCEMENT CASES – BILL MORAN**

Mr. Moran summarized the facts of three recent cases dealing with the enforcement of the Subdivided Lands Law, the regulation of the timeshare industry, and the consequences of falsifying education requirements for both the provider and the licensee.

### **4) AUDIT CASES – FA-CHI LIN**

Mr. Lin summarized a recent audit case which demonstrated the importance of broker supervision.

### **5) RECOVERY ACCOUNT – ROBIN WILSON**

Mr. Wilson provided a brief overview of the Recovery Account. The Recovery Fund became operative in July, 1964. It is a fund of last resort for people who have been defrauded by a licensee in connection with a transaction requiring a real estate license, and enables them to recover some of his/her actual loss, when the licensee has been proven to have insufficient personal assets to pay for that loss. In order to receive payment from the Recovery Account, the claimant must have obtained a judgement or order of restitution based upon intentional fraud or conversion of trust funds. Since the Recovery Account became operable approximately 40 years ago, the Department has received approximately 4,045 applications, paid out on 2,181 applications totaling approx. \$35 million, denied approximately 1,700 claims and received approximately \$1.3 million in reimbursements.

Wilson reported that in 1984/1985, the cost of managing the Recovery Account was astronomical, with Attorney General fees amounting to over \$700,000 per year. In an attempt to reduce these costs, the department implemented a staff suggestion to administer the Account in-house. Within a three year period of that process being in place, the cost of administering the Account went down to about \$150,000 per year.

Wilson concluded his remarks by summarizing the details of a Recovery Account claim which is representative of the types of claims the department receives.

#### **6) LEGISLATION – TOM POOL**

Mr. Pool discussed two bills of interest. The first, AB 2261 (Para), would allow the Department to license brokers as Limited Liability Companies (LLC). This bill would require minimum amounts of liability insurance or a net worth of \$5 million or a combination of the two before a license would be issued to an LLC. The bill is currently being debated in the legislature.

The second bill, AB 2252 (Montenez), is sponsored by the timeshare industry, and would revamp how timeshares are qualified for sale in California. Currently, the same provisions of the Subdivided Lands Law which apply to common interest development projects are applied to timeshare projects. The new bill would make the regulatory scheme more applicable to the products now being offered by the timeshare industry and allow the projects to get to market more quickly. It also allows for increased consumer protection by extending the rescission period from 3 to 7 days. If passed, the industry predicts that more developers will bring their projects into California.

#### **7) ELICENSING – BARBARA BIGBY**

Ms. Bigby provided an overview of the Department's accomplishments and efforts over the past year in the area of information technology. One of those accomplishments is the introduction of examination transactions to the eLicensing system. By introducing these transactions into eLicensing, the Department hopes to deflect calls from the phone lines onto the Internet, thereby reducing the demand on the telephone IVR system. It is also a benefit to examinees as it allows for expedited processing of examination requests. Bigby walked the audience through an interactive demonstration of examination services available through eLicensing, which showcased the new features available for examinees. She also demonstrated some of the other features added to eLicensing over the past year for licensees, such as the ability to elect to receive the Real Estate Bulletin electronically. Another significant improvement to the eLicensing system which should be available by the end of the current fiscal year is the ability for brokers to terminate salespeople online.

#### **8) OPEN FORUM**

**Q)** According to the demonstration, the system provides a test score breakdown only if an applicant fails a license exam. As a broker, I would certainly like to know if I hired a salesperson who only barely passed the exam, so I would like to see a breakdown given to all examinees, pass or fail. Additionally, I would like to request that the pass rate be raised to 75 or 80%. The current rate of 70% only serves to encourage mediocrity.

**A)** **Bigby** – The DRE has never provided a breakdown to those examinees who pass the exam. The exam is qualifying in nature, not competitive. We provide a breakdown to those who fail the exam so that they have an idea of where their weaknesses are so that they can concentrate their studies on those areas before retaking the exam.

**Q)** How does it benefit industry to make it easier to get a real estate license than a beautician's license? Instead of providing a notice with a percentage score breakdown to those who fail, the department should only provide a failure notice. Who does it benefit to direct an examinee as to what material they need to study?

**A)** **Liberator** – Currently, the pass rate for the broker and salesperson exams is less than 50%. Based on those pass rates, the exams appear to be difficult enough. We feel it is our responsibility to give an examinee who has failed the exam an idea of where their weaknesses are. Hopefully, they'll study and improve upon their knowledge in those areas, and are subsequently able to pass the exam. They've already proven they know the material in some areas based upon the score breakdown. We're simply directing them to those areas where they're lacking the knowledge necessary to pass the exam.

**Q)** Concerned that the eLicensing system seems to start the hiring process with the salesperson rather than the broker. Isn't that putting the cart before the horse? If we were doing it manually, the salesperson would have to have the broker sign the paperwork before they could become employed.

**A)** **Bigby** – The system was not designed to reverse the process. It was designed to follow the steps which would be taken if the application was being submitted in paper form. In that case, the salesperson would complete the application, hand it to the broker to certify, and mail it in. In eLicensing, the salesperson completes the application online, the system sends an e-mail notice to the broker stating that they need to certify this salesperson before he/she will be added to the broker's record. That salesperson will not show in the employ of that broker until the broker certifies.

**Q)** When you pull up a broker's record from the licensee database, it lists all the agents employed by the broker. The license numbers of the sales agents are highlighted. If I click on those, will I see the records of those licensees?

**A)** **Bigby** - Yes.

**Q)** If a broker receives a letter from the DRE which says a complaint has been made against him/her, and if that broker is asked to respond and does, how long do you estimate it would be before they would hear something? Is no news good news?

**A)** **Moran** – Depends on the nature of the case and how complicated it is. Our current goal to complete an investigation is 12 months or less. If you don't receive anything in the mail that has Accusation written on it, that's good news.

**A)** **Liberator** – We do realize that 12 months is a very lengthy timeframe but as I stated earlier in my remarks, we've lost a significant number of positions over the past three years and had been prevented from filling vacant positions. Combine that with the increase in work load we've been experiencing, and reducing those timeframes becomes very difficult.

**Q)** The City is sending her license fee notifications – how did they get her name?

**A)** **Liberator** – Without knowing your particular situation, anyone can purchase a list of licensees' names from the DRE.

**Q)** Some people have expressed their concerns with the passing scores of examinees. I believe what's more important, but can't be tested, is an individual's value system. The most important part of this business is having ethics and values, and that's what I'd be looking for in a salesperson, not a particular test score.

**Q)** Applauds the e-renewal system. Recently renewed license online, and it took less than 3 minutes to complete. Please provide some clarification as to what constitutes Agency. There are licensees who take money to put someone's home/property on our MLS, but do nothing else. They don't believe there is any agency relationship there. If you're compensated for doing something for someone, haven't you created an Agency?

**A) Wilson** –The law defines a licensee as a person who solicits prospective purchasers or others for and in expectation of compensation. It seems to me that once you've agreed to put someone's name in the MLS system, you've agreed to go out and assist that person and solicit prospective buyers. To the extent that you've put that information into the MLS system, you have certain duties and obligations as to the accuracy of the information being put in. But whether or not you'll have further obligations is traditionally a matter of contract between two parties. It's an issue that we're concerned about and there certainly should be a lot of disclosures to the prospective seller as to what the nature of the obligations are that go with the listing. The scope of an agency can be limited, but there are some areas of agency that cannot be waived. You have certain obligations under the law, including providing a transfer disclosure statement to the prospective buyer/seller. The TDS could include something that sets forth a limited agency arrangement.

**Q)** 1) Compliments on the website. 2) Would like to address the issue of agents for whom English is not their primary language, and who demonstrate an inability to speak and understand the language. This makes one wonder how they passed the exam, and might even lead someone to believe that the individual had someone take the exam for him/her. Has consideration ever been given to further identifying who is taking the exam to ensure that these non-English speaking people aren't having someone take the exam for them?

**A) Bigby** – We do attempt to ensure that the exam applicant and the person taking the exam are the same person. Our exam proctors are required to look at a drivers license or picture identification of the person coming into the examination and compare it with the name on the exam notice to be certain they are one and the same person. If the examinee does not have a picture ID, they are either fingerprinted or a picture is taken and we follow-up on the information.

**Q)** Concerned with the lack of standardized contracts in new subdivisions. Some are written by the developer's attorney and are weighted towards the seller. Many have unusual formats which most agents aren't familiar with. It would be nice to see some move by the Department to standardized these contracts.

**A) Neri** - Developers are required to submit their contracts to the DRE for review and approval before they can begin selling the project. Individual developers do oftentimes contract with attorneys to develop their contracts. Unfortunately, we're limited by law as to what we can require.

**Q)** Serves as President of local MLS. Some real estate companies have drafted the term “MLS” into their business names, which we find to be misleading. Not positive this is a violation of law, but our attorney believes the practice is questionable. We would welcome your help in resolving the issue.

**A) Liberator** – This issue was brought to our attention some time ago. Our staff has since been given a list of terms which cannot be included in a licensee’s name. There are variables to what would be an allowable use of the term MLS. For example, we would find “MLS of San Diego” to be unacceptable. We’ve determined that what was done in the past is in the past, and believe we’ve addressed the problem by alerting our staff and setting parameters to use in issuing future licenses.

Liberator concluded the meeting at 2:45 p.m.

Lisa Stratton  
Recorder